



Department of Energy

Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1563

September 25, 2001

Mr. Michael F. Gearheard, Director
Environmental Cleanup Office, ATTN: ECL-113
U.S. Environmental Protection Agency Region 10
1200 Sixth Avenue
Seattle, WA 98101

SUBJECT: Request for Information Pursuant to Section 104 of CERCLA for INEEL
(OCC-01-129)

Dear Mr. Gearheard:

We are in receipt of your letter of August 22, 2001, requesting information pursuant to section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). You sent a similar letter to our management and operating contractor at the site, Bechtel BWXT Idaho (BBWI).

We are concerned about EPA's use of section 104 in this context for several reasons. First, the Department believes that much of the information you have requested has already been provided to EPA pursuant to the Federal Facility Agreement and Consent Order (FFA/CO). The FFA/CO establishes procedures for the exchange of information among the parties to that agreement. If EPA believes it needs additional information, the Department believes it would be more appropriate to use these procedures rather than section 104. Moreover, it appears that section 2 of Executive Order 12580 vests some of the authorities granted by section 104 of CERCLA in the Secretary of Energy rather than the Administrator as to sites under DOE's control.

Another of our concerns involves your request for information from BBWI. Based on our contract with BBWI, the records you seek from our contractor are government records and are fully encompassed by your request to DOE. Therefore, BBWI will examine the DOE records in its possession and provide the Department with the documents responsive to your request. Along with responsive DOE records already in our possession, we will provide you with the pertinent government records in BBWI's possession. Consequently, there is no need for a separate request for information directed towards BBWI, and we ask that you withdraw it.

Despite these concerns, we will provide you with the information you requested in a timely manner. As you know, we are currently involved in negotiations with your agency and the Idaho Department of Environmental Quality to resolve the dispute regarding Stage II of the Pit 9 project. Many of the same people who would search for records and prepare responses are

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working with the Department's representatives in the negotiations. Therefore, we will need additional time to provide the information you have asked for, we believe that we will be in a position to provide you with our response by November 16, 2001.

Please direct any questions regarding the legal aspects of this response to Roger Corman at (208) 526-2758; please direct technical questions to Kathleen Hain at (208) 526-4392.

Sincerely,


Warren E. Bergholz, Jr.
Acting Manager

0400
OCC-01-129
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ID DISTRIBUTION:

R.K. Corman, MS 1209
K.E. Hain, MS 1117
R.T. Swenson, MS 3940

CONCURRENCE:

RECORD NOTES:

1. The letter was prepared to respond to EPA's Request for Information related to Pit 9 progress.
2. This letter was written by R. Corman, coordinated with Katie Hain, Paul Detwiler, Sally Robison, and Mark Frei, and signed by Warren Bergholz.
3. This letter/memo closes OATS number 04139
4. The attached correspondence has no relation to the Naval Nuclear Propulsion Program. Naval Reactors concurrence is not required.